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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

1400.4100209

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on 09-27-2006

Signature

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Application Number

09/275,934

Filed

03-24-1999

First Named Inventor

Mark William Janoska

Art Unit

2616

Examiner

Hoang, Thai D.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

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attorney or agent of record.

Registration number \_\_\_\_\_

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of \_\_\_\_\_ forms are submitted.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mark William Janoska

Title: METHOD AND APPARATUS FOR LINE CARD REDUNDANCY IN  
A COMMUNICATION SWITCH

App. No.: 09/275,934

Filed: 03-24-1999

Examiner: Hoang, Thai D.

Group Art Unit: 2616

Atty. Dkt. No. 1400.4100209

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Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

Claims 1-28 are pending in the present application. The Examiner has allowed claims 24-28. The Examiner has rejected claims 1-5, 7, 8, and 11-21. The Examiner has objected to claims 6, 9, 10, 22, and 23. Applicant respectfully requests reconsideration of pending claims 1-23. Applicant files herewith a notice of appeal. Pursuant to the "New Pre-Appeal Brief Conference Pilot Program," 1296 Off. Gaz. Pat. Office 67 (July 12, 2005) and the "Extension of the Pilot Pre-Appeal Brief Conference Program" dated 1/10/2006, Applicant submits a pre-appeal brief request for review. The review is requested for the reasons set forth below:

Applicant submits there exist clear errors in the Examiner's rejections and/or the Examiner's omissions of one or more essential elements needed for a *prima facie* rejection. Applicant submits the Examiner's "Response to Arguments" provides evidence that the Examiner has failed to consider the pending claims as required by the Manual of Patent Examining Procedure (MPEP) and prevailing case law. For anticipation under 35 U.S.C. § 102, a reference must teach every aspect of the claimed invention either explicitly or implicitly. Any feature not directly taught must be inherently present [emphasis added]. See MPEP 706.02 – distinction between 35 U.S.C. § 102 and § 103. As Applicant describes in detail below, Applicant submits there exist clear errors in the Examiner's rejections and/or the Examiner's omissions of one or more essential elements needed for a *prima facie* rejection.

As to claim 18, Applicant submits that Sakamoto fails to disclose the subject matter of claim 18. For example, Sakamoto fails to disclose the step of "using routing information included in the egress data to determine to which among the following group the egress data is provided: the first line card, the second line

card, and both the first and the second line cards." In fact, Sakamoto teaches away from such subject matter. For example, in column 2, lines 20-23, as cited by the Examiner, Sakamoto states that an input cell is routed to an ATM switch 2 output according to the contents of the cell header thereof and then states that the output cell is sent via the selector card 3 to be broadcast to line interface cards of the active and standby systems corresponding to the output port. Thus, Sakamoto appears to teach that, while contents of the cell header are used for routing an input cell to an output of ATM switch 2, communication of the output cell is not dependent on the same contents of the cell header, as Sakamoto does not appear to provide the ability to selectively route the output cell to line interface cards, but merely broadcasts the output cell to both the line interface cards of the active and standby systems. Therefore, Applicant submits that claim 18 is in condition for allowance.

The Examiner has rejected claims 1-5, 7, 8, 11-17, and 20-21 under 35 U.S.C. § 103(a) as being unpatentable over Sakamoto (U.S. Patent No. 6,075,767). Applicant respectfully disagrees.

Regarding claims 1 and 15, as the Examiner states, "Sakamoto does not explicitly disclose that the line card manager (3) includes a router." However, Applicant disagrees with the Examiner's assertion that "Sakamoto discloses that the first and second line cards (1-1 and 1-2) comprise a routing function." Applicant cannot find any mention of the header conversion processing unit 41 described in the portion of Sakamoto cited by the Examiner being described as a router. Rather, the header conversion processing unit 41 of Sakamoto apparently merely performs an "ATM header conversion" and assigns "an internal cell header," but does not provide the functionality of a router as recited. Furthermore, Applicant disagrees with the Examiner's assertion that "Sakamoto discloses...wherein the router provides egress data from the corresponding output to at least one of the first and second line cards based on routing information included in the egress data." Rather, the header conversion processing unit 41 appears to operate on cells being passed from interface card 1-1 to selector card 3. Thus, Applicant submits that Sakamoto teaches away from the present invention as set forth in claims 1 and 15.

Regarding claims 1 and 15, in the Examiner's "Response to Arguments," the Examiner acknowledges that "Sakamoto does not explicitly disclose a router." The Examiner cites col. 14, line 66, through col. 15, line 4, of Sakamoto as stating, "While the present invention has been described with reference to the particular illustrative embodiments, it is not restricted by those embodiments but only by the appended claims. It is to be appreciated that those skilled in the art can change or modify the embodiments without departing from the scope and spirit of the present invention." The Examiner then concludes, "Thus, one of ordinary skill in the art at the time the invention was made to modify the routing function in the system disclosed by Sakamoto for advantages above with respect to claim 1."

However, MPEP § 2141 states, in part, “Office policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquiries enunciated therein as a background for determining obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.”

While the cited portion of Sakamoto states that “...those skilled in the art can change or modify the embodiments...,” Applicant can find nothing in the cited portion of Sakamoto nor the Examiner’s conclusion drawn therefrom that would appear to constitute “...(C) Resolving the level of ordinary skill in the pertinent art...” Thus, Applicant submits the Examiner’s purported “...consideration and determination of obviousness under 35 U.S.C. 103...” does not appear to conform to “Office policy” or the requirements of the underlying case law.

Moreover, the cited portion of Sakamoto states, in part, “While the present invention has been described with reference to the particular illustrative embodiments, it is not restricted by those embodiments but only by the appended claims...,” the Examiner fails to show how such restrictions admittedly imposed by “...the appended claims...” of Sakamoto would purportedly overcome the admitted fact that “...Sakamoto does not explicitly disclose a router.” Thus, Applicant submits the teachings of Sakamoto fail to anticipate or render obvious the claimed invention as set forth in claims 1 and 15. Therefore, Applicant submits claims 1 and 15 are in condition for allowance.

Regarding claims 2, 3, 16, and 19, while the Examiner states that it would have been obvious to add a buffer into the system disclosed by Sakamoto, Applicant respectfully disagrees. Applicant notes that the system of Sakamoto addresses synchronization problems affecting switchover. Since buffers typically introduce some propagation delay, which would seemingly exacerbate such synchronization problems in the context of Sakamoto’s system, Applicant submits that Sakamoto teaches away from the addition of buffers. The Examiner responded, “Examiner believes that this argument is not relevant because it is directed to subject matter not found in the claims.” Applicant respectfully disagrees. Applicant submits that such argument was asserted to show Sakamoto et al.’s incompatibility with the allegedly obvious modification proposed by the Examiner. Accordingly, Applicant submits that one of ordinary skill in the art would be disinclined to “add a buffer into the system disclosed by Sakamoto in order to control data flow in the system,” as such an addition would appear to contradict the apparent purpose of the system of Sakamoto et al. Thus, Applicant submits that Sakamoto et al. teach away from the present invention as recited in claims 2, 3, 16, and 19. Therefore, Applicant submits that

claims 2, 3, 16, and 19 are in condition for allowance. Regarding claims 2, 3, 16, and 19, Applicant notes that, in the Examiner's "Response to Arguments," the Examiner states, "The system will have no synchronization problem if the same buffers are added to the both line cards, because the propagation delays in both line cards are the same." However, the Examiner fails to cite any evidence to support such assertion, especially how "...the same buffers..." can be "...added to both line cards..." and how "...the propagation delays in both line cards are the same." Thus, Applicant submits claims 2, 3, 16, and 19 are in condition for allowance.

Regarding claims 4 and 17, Applicant cannot identify teachings of the limitations recited in claims 4 and 17 within the portion of Sakamoto et al. (col. 8, lines 28-67) cited by the Examiner. Applicant has presented reasons for the allowability of claim 1, from which claim 4 depends. Applicant has presented reasons for the allowability of claim 15, from which amended claim 17 depends. Applicant submits claims 4 and 17 are also in condition for allowance.

Regarding claims 5 and 21, while the Examiner cites portions of Sakamoto et al. that mention "failure" or "defect," Applicant believes that argument to be irrelevant because it is directed to subject matter not found in the claims. Applicant notes that the Examiner does not cite any portion of Sakamoto et al. that would disclose the limitations recited in claims 5 and 21. The Examiner acknowledges, "Sakamoto does not disclose when idle states are present in the active line card, the arbiter passes inactive line card data inactive line card [sic]." The Examiner asserts, "However, the method of activating the redundancy line card when idle states (or idle cells) are detected in the working line card is well known in the art." The Examiner concludes, "It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply idle states into Sakamoto's system in order to improve quality of service because avoiding data lost in the system [sic]." However, Applicant notes the Examiner has failed to present any evidence to support the Examiner's contention as to what allegedly "...is well known in the art." Moreover, the Examiner fails to present any reason why what the Examiner appears to consider "...is well known in the art" would bear any relevance to what might be alleged *was* well known in the art at the time the invention was made. Furthermore, Applicant submits it does not appear that the Examiner has adhered to "...Office policy..." of following "...*Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103...", as set forth in MPEP § 2141. As Applicant submits is evidenced by the distinction between what allegedly *is* well known in the art and what might be alleged *was* well known in the art, Applicant submits "...the level of ordinary skill in the pertinent art..." has not been accurately resolved in accordance with MPEP § 2141 and the underlying case law. Thus, Applicant submits claims 5 and 21 are in condition for allowance.

Regarding claims 7 and 20, the Examiner states, "...the method of using filter for passing only selected data types is well known in the art and applied in conventional communication systems." However, the

Examiner does not cite evidence to support such assertion. Thus, Applicant submits claims 7 and 20 are allowable in view of the Sakamoto reference.

Regarding claim 8, Applicant disagrees with the Examiner's assertion that "Sakamoto discloses that the register (27) that determines the selected data types." Not only are no filters apparently present in the system of Sakamoto, but also Applicant can find no disclosure in Sakamoto that register (27) determines selected data types as recited. The Examiner states that Sakamoto implies that selector control register 27 determines selected data types. Applicant respectfully disagrees. Sakamoto states, in col. 8, lines 9-13, as cited by the Examiner, that "selector card 3 includes a selector for selecting either one of the streams of input cells received via the paired line interface circuits 15...[and] a selector control register 27 for outputting a selection signal of the selector 9." The Examiner has already admitted that Sakamoto does not explicitly disclose that the system comprises filters. As such, Sakamoto also does not disclose "wherein filters are configured based on a register that determines the selected data types." Moreover, selector control register 27 is not a "register that determines the selected data types," as it does not determine selected data types, but merely outputs a selection signal of the selector 9, and selector 9 selects either one of the streams of input cells received via the paired line interface circuits 15, not data types. Regarding claim 8, Applicant reiterates the reasons presented above with respect to claim 7 and submits that the limitation "...filters are configured based on a register that determines the selected data types" cannot be met in absence of such filters. Thus, Applicant submits claim 8 is in condition for allowance.

Regarding claim 11, Applicant has presented reasons for the allowability of claim 1, from which claim 11 depends. Moreover, Applicant can find no mention in Sakamoto of an NxN switch core and 2N line cards. Applicant submits that claim 11 is also in condition for allowance.

Regarding claims 12-14, Applicant has presented reasons for the allowability of claim 1, from which claims 12-14 depend. Applicant submits that claims 12-14 are also in condition for allowance.

Respectfully submitted,

09/27/2006 Date



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